

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

MOHAMMED ALSAIRWAN,

Defendant and Appellant.

B209907

(Los Angeles County  
Super. Ct. No. KA078643)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Daniel Buckley, Judge. Affirmed.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Susan Sullivan Pithey and Julie A Harris, Deputy Attorneys General, for Plaintiff and Respondent.

---

Defendant Mohammed Alsairwan appeals from the judgment following his no contest plea to commercial burglary, and related theft offenses. He also appeals from a post-judgment order in an earlier case revoking his probation. Defendant challenges the propriety of the resulting state prison sentence, contending the trial court misunderstood and/or abused its discretion to dismiss the prior qualifying strike conviction for sentencing purposes under Penal Code section 1385 and *People v. Superior Court (Romero)* 13 Cal.4th 497 (*Romero*). We affirm.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. Underlying Charges and Pleas*

#### *a. Case No. KA078643<sup>1</sup>*

On March 9, 2007, defendant and codefendant Christopher Hoff<sup>2</sup> stole about \$3,000 worth of items from inside a residence to purchase drugs. Defendant was charged by criminal complaint in case No. KA078643 with one count of residential burglary and one count of grand theft of personal property exceeding \$400 in value.

On April 25, 2007, defendant entered a negotiated no contest plea to residential burglary. Pursuant to the plea agreement, he was placed on three years of formal probation, on condition he serve 180 days in county jail, with credit for time served. The grand theft count was dismissed on the People's motion.

#### *b. Case No. KA080947*

Eight months after his earlier arrest, defendant and codefendant Ryan Rumfelt<sup>3</sup> stole boxes containing power tools from inside a carport on November 14, 2007. Defendant was charged by information in case No. KA080947 with one count each of commercial burglary, grand theft of personal property, receiving stolen property and petty theft with a prior theft-related conviction. As to all counts, the information further

---

<sup>1</sup> Case numbers are those of the Los Angeles Superior Court.

<sup>2</sup> Christopher Hoff is not a party to this appeal.

<sup>3</sup> Ryan Rumfelt is not a party to this appeal.

alleged defendant had suffered a prior serious or violent felony conviction (residential burglary in case No. KA078643), within the meaning of the “Three Strikes” law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)). The People also alleged defendant violated probation in case No. KA078643 as a result of his new arrest.

In an open plea to the court on December 14, 2007, defendant pleaded no contest to all counts and admitted the truth of the prior strike conviction allegation in case No. KA080947. Following a hearing, the court also found defendant in violation of probation in case No. KA078643.

## *2. Romero Motion Hearing*

Prior to sentencing, defendant filed a *Romero* motion and met with Dr. Haig J. Kojian, a psychologist, who prepared two reports in support of the motion. Dr. Kojian testified at the motion hearing that he had interviewed defendant, who was then nearly 20 years old, on December 17, 2007 and January 8, 2008.

Dr. Kojian determined that defendant was suffering from several emotional problems: (1) Continuing culture shock beginning four years earlier when he had returned to California from Saudi Arabia where he had lived with his father for eight years. (2) Stress and confusion induced by his divorced parents’ contentious relationship and conflicting parenting philosophies. (His mother resided in California; his father lived in Saudi Arabia.) (3) Social ineptness as reflected in defendant’s inability to make friends at school or to adjust to an academic environment. (4) Mood disorder arising from defendant’s continuous emotional problems and inability to solve them. Dr. Kojian also found defendant’s intellect was somewhat limited and he had turned to methamphetamine and alcohol.

Dr. Kojian believed defendant had been misdiagnosed between March and October 2007, as bipolar and therefore should not have been prescribed medications for that disorder. Dr. Kojian suspected defendant’s criminal behavior was linked to his ongoing substance abuse rather than to bipolar disorder.

In Dr. Kojian’s opinion, defendant was not “a hardened criminal” and would benefit from in-patient psychiatric and substance abuse treatment on probation.

According to Dr. Kojian, imprisonment “could be detrimental” to defendant’s “overall functioning.”

On January 25, 2008, defendant’s father and stepfather each testified at the hearing that a prison sentence would be harmful to defendant; he would benefit from a grant of probation. The stepfather further testified that after defendant’s conviction for residential burglary, defendant was diagnosed by Dr. Nageswara Guntupalli, a psychiatrist, as having bipolar disorder and was prescribed medications. The stepfather attributed defendant’s subsequent criminal behavior to defendant’s failure to take his medications.

At the conclusion of the testimony the same day, the trial court summarized the factors it was required to assess in exercising its discretion under *Romero*. Of concern to the court were the underlying reasons for defendant’s criminal conduct and related substance abuse between March and October 2007. The court reasoned if defendant were bipolar, it might prove to be a mitigating factor to justify dismissing the prior strike conviction. Responding to defense counsel’s argument, the court indicated it was not prepared to dismiss the prior strike conviction after hearing Dr. Kojian’s opinion testimony, because the cultural and family issues the psychologist attributed to defendant “are not a proper basis for a *Romero* motion.” The court wanted to hear testimony from Dr. Guntupalli; and the hearing was continued for that purpose.<sup>4</sup>

On March 7, 2008, Dr. Guntupalli testified he saw defendant on three occasions, September 8, and 20, 2007, and October 12, 2007. After diagnosing defendant as suffering from bipolar disorder with depression, Dr. Guntupalli prescribed medications. In his successive visits with the psychiatrist, defendant complained he was still depressed and was using methamphetamine and alcohol. However, he refused to be hospitalized and to stop his substance abuse. Dr. Guntupalli prescribed another medication and advised him to seek outpatient substance abuse treatment. Responding to questions by the court, Dr. Guntupalli testified while defendant’s type of bipolar disorder was

---

<sup>4</sup> The trial court also requested that defendant’s school records be produced. Later, the court realized defendant had dropped out of school in May 2006, some 10 months before he committed residential burglary.

debilitating, neither the disorder nor the prescribed medications would have prevented defendant from seeking substance abuse treatment. Following Dr. Guntupalli's testimony, the trial court found the psychiatrist's testimony failed to show defendant's substance abuse and/or bipolar disorder induced his criminal conduct.<sup>5</sup>

After listening to argument from counsel, the trial court agreed to order a diagnostic study, although the court concluded the study would not assist in evaluating defendant's mental state at the time of his repeated criminal conduct. Criminal proceedings in KA080947 and KA07864 were suspended and defendant was referred to the Department of Corrections. Because the diagnostic study resulted in differing opinions, there was an administrative review which recommended against granting defendant probation because he would likely reoffend.

### 3. *Sentencing Hearing*

On June 16, 2008, criminal proceedings were reinstated in both cases. At the outset of the hearing, the trial court stated it had reviewed and considered the diagnostic study and invited argument from counsel. Defense counsel urged the court to grant the *Romero* motion and either place defendant on probation or impose a minimal state prison sentence. Defendant's father also made a statement to the court.

In declining to dismiss the prior strike conviction, the trial court found defendant had failed to show he merited leniency under *Romero, supra*, 13 Cal.4th 497: "The simple analysis is the wake-up call should have occurred with the first crime. That could have been a prison sentence, but he was given probation. There was no doubt if he did something wrong again, he clearly was going to be facing state prison, but also facing this strike which would double any sentence. Basically, what I'm being asked to consider in striking the strike, I believe, ultimately, is not justification under the case law. It may well be if there was not a strike, it would be something I would obviously consider to

---

<sup>5</sup> Following the psychiatrist's testimony, defendant testified he immediately stopped his substance abuse when Dr. Guntupalli told him it would interfere with the medications. Defendant asked to receive probation, assuring the court this time he would comply with all terms and conditions.

give probation rather than state prison. But given the strike law is the way it is, I don't believe I have the facts or the grounds to do that.”

The trial court then sentenced defendant to 32 months in state prison for commercial burglary (the 16-month lower term doubled under the Three Strikes law) and stayed sentence on the remaining counts under Penal Code section 654 in case No. KA080947. For violating probation in case No. KA078643, the court sentenced defendant to a concurrent term of two years in state prison.

### **DISCUSSION**

After a three-day evidentiary hearing, a diagnostic study and protracted argument by counsel, defendant contends the trial court “did not understand the scope of the factors it could consider” in exercising its discretion under *Romero*. Defendant’s contention is specious.

Penal Code section 1385, subdivision (a), vests the court with discretion to dismiss a prior conviction, including a qualifying strike conviction, “in furtherance of justice.” (*Romero, supra*, 13 Cal.4th 497, 529-530; *People v. Williams* (1998) 17 Cal.4th 148, 158.) “[I]n ruling whether to strike or vacate a prior serious and/or violent felony conviction allegation or finding under the Three Strikes law . . . or in reviewing such a ruling, the court . . . must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the [Three Strikes] scheme’s spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.” (*Williams*, at p. 161.)

We review the trial court’s refusal or failure to grant a *Romero* motion for abuse of discretion. (*People v. Carmony* (2004) 33 Cal.4th 367, 376; see *Romero, supra*, 13 Cal.4th at p. 530.) “[T]he three strikes law not only establishes a sentencing norm, it carefully circumscribes the trial court’s power to depart from this norm and requires the court to explicitly justify its decision to do so. In doing so, the law creates a strong presumption that any sentence that conforms to these sentencing norms is both rational

and proper. [¶] . . . [¶] . . . ‘[I]t is not enough to show that reasonable people might disagree about whether to strike one or more’ prior conviction allegations. [Citation.] . . . Because the circumstances must be ‘extraordinary . . . by which a career criminal can be deemed to fall outside the spirit of the very scheme within which he squarely falls once he commits a strike as part of a long and continuous criminal record, the continuation of which the law was meant to attack’ [citation], the circumstances where no reasonable people could disagree that the criminal falls outside the spirit of the three strikes scheme must be even more extraordinary.” (*Carmony*, at p. 378.)

The record establishes the trial court well-understood and carefully considered the pertinent *Romero* factors in denying defendant’s motion to dismiss the prior strike conviction. After reciting all of the *Romero* factors, the court and parties primarily focused on the factors of defendant’s background, character and prospects, in an effort to understand defendant’s sudden and recidivist criminal conduct. As for Dr. Kajian’s testimony concerning these factors, the court did not “summarily reject” his opinion that defendant was dealing with cultural and family issues. The court considered the evidence but found it to be unpersuasive.<sup>6</sup> As the court later made clear to defense counsel, “I heard at the outset was that this young man was thrown back and forth between parents and cultures such that he was just not able to function appropriately in our society. But I just don’t see that.”

Defendant’s claim the trial court failed to consider the option of a “non-strike prison term,” but instead believed “unsuitability for probation under the Three Strikes law” meant “unsuitability for a non-strike prison term” is equally devoid of merit. During final argument on the *Romero* motion, the trial court heard defense counsel urge that the prior strike conviction be dismissed and that defendant be sentenced to the lower state prison term if not placed on probation. Nothing in the record suggests the court

---

<sup>6</sup> It is significant that rather than deny the motion for insufficient evidence, the trial court sought additional and potentially mitigating evidence after defendant’s stepfather and Dr. Kajian testified that defendant had been diagnosed and was under treatment for bipolar disorder and was engaged in substance abuse shortly before his second arrest.

misunderstood, was unaware of, or disbelieved it had the discretion to impose a determinative state prison term, rather than probation if it were to grant the *Romero* motion. Indeed, in its decision to deny the motion, the trial court's evaluation of defendant's background, character and prospects was precisely the assessment the Supreme Court has directed courts to make and was well within its discretion. (*People v. Williams, supra*, 17 Cal.4th 148, 161.)

### **DISPOSITION**

The judgment is affirmed.

**WOODS, Acting P. J.**

**We concur:**

**ZELON, J.**

**JACKSON, J.**